

Citation for published version:

Moore, S, Clayton, A & Murphy, H 2021, 'Seeing Justice Done: Courtroom Filming and the Deceptions of Transparency', *Crime Media Culture*, vol. 17, no. 1, pp. 127-144. <https://doi.org/10.1177/1741659019883764>

DOI:

[10.1177/1741659019883764](https://doi.org/10.1177/1741659019883764)

Publication date:

2021

Document Version

Peer reviewed version

[Link to publication](#)

FORTHCOMING: Moore, Sarah ; Clayton, Alex ; Murphy, Hector. / Seeing Justice Done: Courtroom Filming and the Deceptions of Transparency. In: *Crime Media Culture*. 2019. (C) 2019 Sage Publications. Reprinted by permission of SAGE Publications.

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Seeing Justice Done: Courtroom Filming and the Deceptions of Transparency

Abstract

There has been a global shift towards courtroom broadcasting in a bid to extend the public gallery into a virtual realm. Such initiatives tend to be based on the idea that transmitting the courtroom boosts transparency, and with it public trust in criminal justice. This is an untested ambition. Moreover, the idea that filming opens a window onto the courtroom comes up against the reality that any transmission entails translation, involving choices and compromises. Based on an in-depth study of courtroom filming and audience response, this article identifies two globally dominant stylistic modes and analyses their meaning and reception. We found that different stylistic modes prompt different types of audience engagement and allow for different levels of comprehension. The analysis therefore provides an insight into how courtroom footage is consumed by the viewing public. It also contributes to our understanding of the norms and values of institutional transparency.

Key words: Courtroom filming / transparency / public trust / audience response

Seeing Justice Done: Courtroom Filming and the Deceptions of Transparency

Introduction

There has been a worldwide shift during the last 20 years towards the introduction of film cameras to courtrooms, radically transforming the manner in which the public is able to ‘see justice being done’, to paraphrase the famous legal aphorism of Lord Justice Hewart. In the second decade of the twenty-first century there has been an evident acceleration in this shift, with the global transmission of high-profile criminal hearings such as those involving Anders Breivik (in 2012) and Oscar Pistorius (in 2014). Courtroom transmission is fast becoming a quintessential feature of modern criminal justice, an innovation that is especially prized by those courts that style themselves as forward-looking. Take, by way of example, the UK Supreme Court (UKSC), operating since 2009 as the final court of appeal in the UK for all civil cases and for criminal cases from England, Wales, and Northern Ireland. The Court was designed with built-in cameras and releases video recordings of summary judgements via the Court’s website and dedicated YouTube channel (UKSC, 2013). The International Criminal Court (ICC) has also, since its inception, allowed film cameras to follow its work: court proceedings are transmitted via a dedicated online platform and there have been four documentaries showcasing and celebrating the ICC’s work (Werner, 2016).

The UKSC and ICC have something else in common: they are relatively new Courts, and their founding, in both cases, was a matter of considerable critical debate (see Cornes, 2013 and O’Sullivan, 2018 respectively). This should alert us to the fact that courtroom transmission is more than simply a technical innovation. It is a means of legitimising the authority of an institution, asserting the significance of public interest in its work, and signalling a commitment to ‘transparency’, a much-used word in policy and public debate on courtroom filming (Garcia-Blanco and Bennett, 2018).

It is tempting to see transparency as the twenty-first century equivalent of ‘open justice’, and courtroom transmission as the newest solution to a historic problem concerning how to give the public access to court processes and outcomes. The eighteenth century English jurist and philosopher Jeremy Bentham famously saw ‘publicity’ as the ‘very soul of justice’, and believed that open courts serve as schools and theatres of justice (Bentham in Burton, 1843: 115-6). As Johnston (2018) points out, twenty-first century court communication initiatives are framed in these same terms. Across jurisdictions, the rationale for courtroom filming initiatives has presupposed that a virtual extension of the public gallery will facilitate better understanding of and trust in the criminal justice system (see, for example, Ministry of Justice, 2012: 7). In this sense, ‘transparency’ and ‘open justice’ are both premised upon the idea that there is a close and straightforward connection between seeing, understanding, and trusting.

Despite these important similarities in stated purpose and ethos, we want to argue for the importance of seeing ‘transparency’ as distinct from earlier attempts at

‘openness’. We flesh-out this argument below, but by way of introduction want to note one very important respect in which courtroom transmission — and ‘transparency’ more broadly — differs from the sort of public access that Bentham had in mind. It is an inevitably *mediated* form of justice that is ‘seen to be done’ via courtroom transmissions. The point of departure for this article is that *any* attempt to transmit the courtroom involves choices around what to show and how to show it. Thus, this article’s first aim is to outline the different choices involved in filming the courtroom and, from there, to identify key stylistic tendencies in as-live courtroom footage. This means accepting that even courtroom footage that appears entirely devoid of style — what we call the ‘transcription mode’ of filming in the analysis below — reflects particular assumptions concerning what is worth showing and seeing. Unpacking this style and set of assumptions means unpacking the values and norms of ‘transparency’. It also means recognising that different types of courtroom footage are likely to elicit different audience responses. Thus, this article’s second aim is to demonstrate that different stylistic modes of courtroom filming influence how the viewing public make sense of court processes and outcomes.

This line of inquiry is of relevance beyond courtroom filming and transmission. Over the past two decades there has been a shift towards live-link video participation in court proceedings. In England and Wales, as well as Australia and New Zealand, the expectation is that the court of the future will be (in the first instance and as much as possible) virtual (Rowden, 2018; Ministry of Justice et al, 2016). Researchers have started to detail the likely impact of this technological turn on defendants (McKay, 2018a; 2018b), victims and survivors (Smith, 2018), and the justice system more broadly (Mulcahy, 2008; 2011; Rowden, 2018). This body of research examines how the increased reliance on video-conferencing is changing the nature and meaning of justice — by, for example, limiting the possibility for meaningful contact between defendant-prisoners and their lawyers (McKay, 2018b) and sanitising court proceedings by reducing the reliance on physical co-presence (Mulcahy, 2008). This article seeks to contribute to this body of research by urging a recognition that there are choices to make in the filming of court proceedings and participants, that these choices confer values, and that differently-produced footage elicits different responses from viewers.

Research methods

This article is based upon a mixed methods study of courtroom filming and transmission in a UK context. This interdisciplinary study — undertaken by academic researchers from the arts, social sciences, and humanities — had two key foci: the production of courtroom footage and audience reception. In the first stage of the project we undertook a comparative textual analysis of courtroom footage from England and Wales, Scotland, New Zealand, Canada, and a range of state courts in the USA. We were specifically interested in footage produced for contemporaneous transmission — whether via news coverage or an organisation’s website or YouTube channel — rather than footage produced for the purposes of documentary-making. Beyond this, we left the parameters deliberately wide: we looked at footage from appeal and trial proceedings, produced by news organisations as well as dedicated court video-journalists. We wanted to get an insight into the range of

footage available to the public as ‘live’ court updates, whether as a clip incorporated into a news report, or as a video circulated on a Twitter feed, via a YouTube channel.

We analysed roughly 50 hours of footage, paying close attention to how the space and proceedings of the courtroom were relayed and shaped through formal features such as camera placement (including distance, angle and coverage), image composition (including lighting, colour, and the arrangement of people and objects within the frame), sound composition (including microphone coverage, sonic quality and sound mix), and the editing of different streams (in terms of selection and rhythm). To better understand the range of available choices, and the broader process of production and distribution, we observed a pilot of courtroom filming in Bristol Crown Court, and carried out a focus group with six UK news journalists and editors centrally involved in court-based reporting. These included journalists from the BBC, ITN, Sky News, a print journalist, and a documentary producer who had extensive experience of using courtroom footage.

The second stage of the project involved using what we learned about the production of courtroom footage to carry out a practice research exercise. This is a relatively common research strategy in the arts, but rarely used in the social sciences. The aim of practice research is to use the creative process as the basis for a critical inquiry. It is a form of learning by doing, the assumption being that, as Barrett and Bolt (2010:2) put it ‘creative arts practice...[can be] a mode of knowledge production’. The practice element for this study involved using publicly available footage from a US federal court to produce two substantially different versions of a short, three minute passage from a civil trial concerning a complaint of police brutality (see Version A: Olmo Artau v Farr A; and Version B: Olmo Artau v Farr B).

Producing the film versions yielded important insights in and of itself, most notably about the effects of including or omitting certain aspects of court proceedings. We also used the film versions in the final stage of the study, where we explored audience responses to courtroom footage. We asked a total of 40 participants to watch and answer questions about the footage we’d produced, with an even split of 20 people watching each film version. We were specifically interested in how viewers interpreted the filmed exchange, and to that end participants were asked what they thought was happening in the footage, and their views about the lawyer and witness. We administered this survey online, via social media, and at the start of a set of four focus groups carried out for the study. The focus groups — with a total of 13 participants — incorporated a range of courtroom footage and provided a more in-depth understanding of how people watch and interpret video recordings of proceedings. All focus group participants were from the South-West of England. Two groups were recruited by advertising in local online fora, one was a group of University students, and one a group of retirees from the University of the Third Age. The focus group discussions were almost invariably lively and engaged: participants clearly enjoyed discussing their immediate impressions of different types of courtroom footage, their interpretations of events and courtroom participants, and, towards the end of the session, their attitudes concerning courtroom transmission

more broadly. Before detailing the findings, we turn now to outline the historical and international context for courtroom broadcasting.

Courtroom transmission in global perspective

There is a relatively long history of documentary films focussed on specific court hearings. The 1948 documentary film of the Nuremberg International Military Tribunal, *Nuremberg: Its Lesson for Today* (dir. Lorentz and Schulberg) is an early example. Made in the USA, but broadcast in Germany, the documentary was meant as an exercise in accountability for the purpose of denazification — one, it bears noting, that was externally-imposed (Michalczyk 2014: 132-6). In-court filming for the purposes of news coverage was a later development. The USA was the front-runner: State Court proceedings in California were first televised in 1978 (Ministry of Justice 2012: 14). As Stepniak (2004, 2012) observes, most liberal democracies started to allow contemporaneous (and, in some cases, as-live) courtroom transmission much more recently, from the late 1980s onwards.

The UK is a relatively late and (so far) partial adopter of courtroom filming and broadcasting. In Scotland, broadcasters have been able to apply for permission to film court proceedings since 1992, but extensive restrictions have meant take-up has been limited (Ministry of Justice, 2012: 13). There has been a more evident shift towards courtroom broadcasting in the UK's upper appeal courts. The Constitutional Reform Act 2005 marked the start of this shift by sanctioning the filming of summary judgements from the then-new UK Supreme Court. In 2013 the Court launched a dedicated YouTube channel, receiving an average 10,000 users each month (UKSC, 2015). In the same year, the Crime and Courts Act 2013 (Section 32) sanctioned the filming and news broadcasting of barristers' summing-up speeches and judges' decisions from the UK Court of Appeal. Since then, the Court has had a dedicated video-journalist who produces an edited broadcast stream for distribution to the UK's four major news organisations, the BBC, ITN, Sky, and the Press Association. In practice, it is footage from high profile appeals that is broadcast, such as, amongst others, the judge's decision in the appeal brought by Mairead PhilPott — against her sentence for the manslaughter of her six children — which several of our research participants had watched.

These relatively tentative developments in courtroom broadcasting foretell a more significant, wide-ranging shift. There has been considerable work during the last three years to assess official policies in this area, with a view to extending courtroom filming. This includes a review by the Scottish judiciary (Dorrian, 2015) and a pilot of filming sentencing decisions in criminal trials in England and Wales (Ministry of Justice, 2016). For those working in news organisations, a more wholesale shift towards the television of court proceedings is just a matter of time — or, as John Battle, head of compliance for ITN, a UK-based television company, put it in a recent interview in *The Guardian* (2018), 'it is inevitable there will be more filming in the courts in time to come'.

As noted above, these developments — current, and expected — reflect a global trend towards the transmission of court proceedings. This is not to ignore the differences that exist between jurisdictions in terms of how courtroom filming is managed, the courts and aspects of proceedings that can be covered, and the arrangements for distribution. For example, whilst many jurisdictions have been keen to introduce cameras to their upper appeal courts — this is the case in the UK, Canada, and Brazil — in other cases courtroom filming is a means of transmitting the work of local or state, trial courts, notably the USA (Youm, 2012). In Norway, Scotland, and South Africa, specific cases have been televised during the last decade — those of Anders Breivik, Nat Fraser, and Oscar Pistorius respectively — but courtroom filming remains something that is negotiated on a case-by-case basis in these jurisdictions (Judicial Office for Scotland, 2013). By contrast, in the UK Supreme Court, filming is routine.

Differences exist, and the challenges of filming trial and appeal proceedings are no doubt distinct, but still the more interesting observation is that jurisdictions around the world are embracing courtroom filming and transmission. In seeking to understand this shift, Stepniak (2012) points to the development of new communications technology that reduces the intrusiveness of filming, the emergence of a legal rights discourse that takes heavy restrictions on courtroom reporting to be an encroachment to freedom of information, and greater government interest in using the media to promote public confidence. These are certainly key factors, but for us this diagnosis raises questions about the role and operation of courtroom filming as a mechanism for increasing transparency and promoting public confidence. It is these ideas that we turn to next.

Filming the courtroom in the era of transparency

As noted above, the introduction and extension of courtroom transmission is part of a broader move towards institutional transparency, a key plank of public policy in twenty-first century liberal democracies (Moore, 2018). Within criminal justice policy there has been an evident growth in transparency initiatives over the past decade. In the UK, these include the launch of an online crime-mapping tool (Chainey and Tompson, 2012), the use of police body-worn cameras (Jameel and Bunn, 2015), and (our example) the introduction of courtroom filming (Ministry of Justice, 2012). The aim of each of these initiatives is to increase transparency and thereby boost public confidence and trust, though this relationship is surprisingly under-researched. Where the public is considered at all in evaluations of courtroom filming initiatives, it is in terms of the sensationalisation of criminal trials involving celebrity defendants, most notably O.J. Simpson (see, for example, Kellner, 2003) — and even here audience response is largely presumed on the basis of media coverage. The alternative possibility — that the footage has served an educative function and boosted trust in justice processes and outcomes — is very rarely scrutinised. Biber (2018) makes a similar point in a recent article in this journal about the as-live transmission of the Oscar Pistorius trial, noting that it is unclear that this coverage eventuated in increased public trust in the administration of justice. Sousa et al's (2015; 2018) research on police body-worn cameras in the USA — a rare project examining the relationship between transparency and public trust — suggests that

there is in fact an ambiguous relationship between seeing, understanding, and trusting justice agencies. In our study too, the relationship between ‘seeing’ and ‘believing’ is far from clear-cut.

We return to this point in the analysis below. For now, we want to note the connection between the official conception of transparency outlined above and the more long-standing principle of government openness (Moore, 2018). Johnston (2018) sees recent developments in court communication — including the televisation of proceedings and increased use of social media — in this way, pointing out that these twenty-first century transparency initiatives align with Jeremy Bentham’s eighteenth century vision of the open court (Bentham in Burton, 1843: 115-6). Both are premised on the idea that the public should have direct access to court hearings, and that this has diffuse benefits, including improved public understanding of official processes and increased accountability for public institutions. Looked at from this perspective, developments in communication technology — specifically, the rise of the internet and new possibilities for circulating swathes of digital data — have given fresh impetus to open government projects.

Transparency initiatives certainly capitalise on the features of digital data, recording, and transmission to achieve similar aims to those associated with government openness. Nonetheless, we think it is useful to think about transparency as a distinctively twenty-first century project. This means recognising that ideas about public access to the state and its auxiliary agencies are not so much a natural consequence of capacity — that is, the technical constraints on how much the state can show, and how much the public can see — as an expression of social and political arrangements — more specifically, normative ideas about what it means for the public to have access to official decisions and processes.

These ideas change over time, and that is borne out when we think about the differences between Bentham’s vision of the open court and twenty-first century transparency. Writing in the late eighteenth century, Bentham evocatively conjures up the open court as a place where judges feel the public’s gaze upon them, the public watch and learn, and witnesses’ testimony is scrutinised in ways they can’t control (Bentham in Burton, 1843: 115-6). Bentham’s open court is a social situation defined by co-presence, shared space, and an often dynamic relationship between watching and being watched. Twenty-first century transparency initiatives — such as courtroom filming — envisages an altogether different form of openness. Here, public access is virtual and mediated. The public can ‘look in on’ a court hearing by watching filmed proceedings, but they are doing so at a distance, indirectly, and unseen by those participating in official processes. Compared to Bentham’s vision of the open court, it is a distinctly one-way form of access, where the public can see, but their presence is no longer felt.

There are other ways in which transparency initiatives are reconfiguring the role — and potentially experience — of the watching public. Bentham’s open court is a place that afforded a certain depth of vision and promoted sustained, engaged watching (Bentham in Burton, 1843: 115-6). By contrast, the ‘transparent’ court available to us via online platforms is, on first sight, a vast repository of recordings.

In transparency initiatives more generally, what tends to be in the first instance ‘on show’ is an archive or database of official records — or else official records are curated in a way that emphasises breadth of vision.

The UK’s online crime-mapping tool is an interesting example of the potential problems with this, as demonstrated in Chainey and Thompson’s (2012) analysis of this transparency initiative. The tool allows users to produce a customised crime map for an area based on police records of the incidents and their progress. What is ‘on show’ in the first instance is a huge map of official responses to crime incidents, appearing as aggregate crime figures for geographical areas. Using the tool means zooming in on a select part of the map, which, click by click, provides a street-level view where records for specific incidents can then be accessed. The temptation — for these users, at least — is to continually move in and out, hopscotching over a region to see where and when the police have recorded incidents. It soon becomes clear, in using the tool, that this is what is being made accessible to the public: the records of police action and decision as and when those records were created. In other words, we have access to individual administrative records as individual administrative records. We are afforded a certain breadth of vision, but the individual data-points that create this general view are very basic. Chainey and Thompson (2012) make this point too, and raise various concerns about the quality of data accessible via the online crime-mapping tool. Despite the interactivity of the crime map, and the seemingly direct access it provides to police records, it is, Chainey and Thompson (2012) argue, misleading in its depiction of crime and uncondusive to public engagement.

The problem, as Margetts (2014) points out, is that transparency initiatives tend to prioritise ‘pushing out’ large volumes of data over making that information intelligible to lay members of the public. The conclusion returns to this issue, by considering what courtroom filming tells us about the ‘transparent courtroom’, and the project of transparency more broadly. The next section works towards identifying the dominant stylistic mode of transparency, though an in-depth examination of the production choices involved in transmitting the courtroom.

Courtroom filming as mediated justice

In their first major study of news production, the Glasgow University Media Group (2009 [1976]: 1) pointed out that ‘[c]ontrary to the claims, conventions and culture of television journalism, the news is not a neutral product...[but rather] a highly mediated product’. A similar observation can be made about courtroom footage produced for the purposes of contemporaneous reporting. In an article providing a focussed analysis of footage from the UK Supreme Court, Moran (2016) identifies several factors that shape production of this material. These include legal restrictions and Court guidelines concerning which aspects of proceedings can be filmed. In the UK Court of Appeal, for example, the video-journalist tasked with producing footage for distribution to news organisations is only permitted to film barristers’ summing up speeches and judges’ sentencing remarks (Ministry of Justice, 2012). In some State criminal trial courts in the USA, witnesses are routinely filmed (Judicial Office for Scotland, 2013). In New Zealand, rules on what can be filmed in

criminal trials are more detailed: extreme close-ups are prohibited, and filming of defendants is subject to a set of specific restrictions (Courts of New Zealand, 2016: Schedule 1). As Moran (2016) points out, different risks pertain to the transmission of appeal, as opposed to trial proceedings, and rules concerning filming to some degree reflect these perceived risks.

Official rules concerning ‘what can be shown’ serve as an important parameter for courtroom filming, but they are by no means the only factor that influence the production of footage. Also important is the decision to film (and then, as a separate decision, to transmit) particular proceedings, and the installation of recording devices. The former determines which hearings the public are given access to; the latter helps determine which parts of a hearing we get to see and hear. Here, in the choice of camera lens, angle and distance, as well as microphone placement and coverage, there is considerable scope to prioritise certain types of sound (the speaking voice, background noise, exchanges between people) and certain types of visual arrangements (the speaking person, background participants, the paraphernalia of the courtroom, amongst other things). Moran (2016) writes at some length on these technological and infrastructural elements, emphasising the importance of camera position (in the UK Supreme Court, and most other courts besides, these are wall-mounted and raised above head-height) and microphone position. He points out that these features make some aspects of the courtroom variously more and less visible, as well as more and less audible than would be the case for a member of the public sitting in the gallery. Parker’s (2015) work on the soundscapes of international criminal trials similarly points to the role of audio technology in shaping participation in justice processes — by, for example, court participants listening separately to interpreted testimony via headphones.

To return to our broader point: all of the elements outlined above — the legislative restrictions on who and what to film, the decision to film a particular hearing, the setting up of the courtroom for filming — are important in producing particular types of courtroom footage, and *this is before* we even get to the point at which a camera is turned on. At this stage, there is a further set of decisions to be made about, amongst other things, the pace of editing and the selection of shots. And if the footage is taken up by news organisations it is subject to another round of mediation. At this point, it will be positioned within a wider news report, and might be re-edited, cropped, overlaid with voice-over, and altered in terms of sound mix and colour.

Courtroom footage is, then, to return to the Glasgow University Media Group’s phrase, a ‘highly-mediated product’. This means acknowledging that its production involves a set of choices and, crucially, that there are reasons for the resulting differences in footage. These reasons extend beyond official rules and physical constraints. Moran (2016) makes a similar point when he suggests that there are ‘unwritten rules’ about the purpose of courtroom transmission that impact upon production choices. Chief amongst these ‘unwritten rules’ is the idea that courtroom footage is a matter of ‘just filming’, rather than ‘making a piece of television’, a distinction made by the UK Supreme Court’s Head of Communications (Moran, 2016: 251). It is, as Moran (2016) points out, a false dichotomy: the ‘just filming’ model of courtroom transmission involves a set of choices and intended effects. Drawing

upon a close analysis of two films of UK Supreme Court summary judgements, he notes that one of the films is dominated by a six minute close-up of the speaking judge, and argues that this *works to confirm* the notion that the camera is ‘just filming’, serving merely as a ‘machine that merely grasps the object before the lens and records its presence’ (Moran, 2016: 252). The overall effect is a form of visibility ‘that displays minimal signs of its own production’ (Moran, 2016: 253). The other film analysed by Moran (2016) is, he suggests, more televisual in its use of editing and shot selection. His broader point is that courtroom broadcasting produces *particular forms* of visibility.

Our formal audiovisual analysis of courtroom footage identified two globally dominant stylistic modes, and they broadly coincide with those noted by Moran (2016). In our wide-ranging analysis of footage from a range of courts and jurisdictions, we found a tendency for footage to rely upon sustained medium close-ups of speaking parties. For instance, in the UK Court of Appeal, both the judge’s summing-up and barristers’ closing speeches are shown in sustained one-shots (*Fig. 1*), effectively as talking heads, without wider coverage of the scene. There is little attempt made to locate that person in the space of the courtroom or with regard to the wider activity of the court. The image stream is formed by cutting between usually just two or three feeds, each the product of a fixed camera. There is rarely any attempt to assist viewer orientation, by, for instance, returning to establishing shots or including objects-in-common between cuts. The editing tends to switch to another medium close-up only when another participant starts talking, following the logic of a visual transcript. We therefore call this the *transcription mode* of courtroom filming, and we associate this particular stylistic mode with the norms and values of transparency (we will return to this idea in the conclusion). Both the UK Court of Appeal and UK Supreme Court adhere to this approach, as does the filming of appeals and trials in New Zealand, proceedings in the Supreme Court of Canada, and hearings in most US State courts.

Figure 1: Footage from the UK Court of Appeal



Figure 2: Footage from Oslo District Court, trial of Anders Breivik



A rarer stylistic mode of courtroom filming for contemporaneous transmission involves more cameras placed at more varied lengths from the primary attention points in the courtroom. For instance, in the trial of Anders Breivik in Oslo’s District Court, when evidence is being presented to the court, we are offered a succession

of views of the courtroom. At one point, a medium close-up of the prosecutor is followed by a tighter close-up of Breivik. We see him smile, his gaze turned downwards, at which point we cut to a wider mid-shot. In this wider shot (*Fig. 2*) we can see that Breivik is writing, which makes sense of his down-turned gaze, and we are offered a view that locates him in the courtroom, surrounded by legal practitioners and security officers. There are frequent returns to establishing shots to help orientate the viewer. There may be the opportunity to cut between close and wider shots of the same participant, locating them within the space of the court. Cameras may be mobile (able to zoom and pan) and therefore able to respond if, for instance, an attorney paces around or moves away from a pedestal. Editing is responsive to exchanges between participants and to the logic of the unfolding situation. We are likely to see people listening, perhaps also making or checking notes, as well as seeing people speaking. Above all, this stylistic mode is the consequence of an interest in following what happens in the courtroom: we therefore call it the *observational mode* of courtroom filming.

It may be tempting to see these modes as arising naturally from different circumstances, such as tight government budgets or the involvement of the independent media (e.g. the Breivik trial, for which TV news cameras were permitted into the courtroom). However, that would be to neglect the degree to which these stylistic modes coincide with different ideas about what the courtroom is and what it means to 'see justice being done'. It is important to recognise that what we are calling the transcription mode is part of the rhetoric of transparency. It is not the absence of style, but a very particular style, one designed to summon a technocratic impression of the justice system. We return to this point in the Conclusion. For now, we want to point out that the virtue of thinking about courtroom filming in terms of distinctive stylistic modes is that we can consider what difference it makes to capture courtroom proceedings in one way or another. Though not his substantive point of interest, Moran (2016) speculates about the different, and potentially unforeseen, effects of courtroom filming-styles on audience response. Is it possible, he asks, that seeing 'more' result in trusting less? What are the effects of giving viewers 'an extended opportunity...to contemplate' the judge? (Moran, 2016: 254). Does a more 'televisual' style of courtroom footage 'facilitate the flow of information to an audience or impede it?' (Moran 2016: 254). This study seeks to answer these important questions by considering the different effects of courtroom footage. We do this, first through a detailed discussion of the practice research exercise carried out for this study, and secondly through an examination of how audience members make sense of courtroom footage.

Making sense of courtroom footage through practice research

As mentioned above, the practice research exercise carried out for this study involved producing two different film versions of court proceedings. Crucially, we were able to access two separate and distinct video feeds of a cross-examination: Feed 1 from a fixed camera trained on the witness stand where a claimant was being interrogated, Feed 2 from a fixed camera trained on the lawyers' bench from where a legal advocate was issuing questions. This allowed us to experiment by

cutting back and forth between the two feeds at different points in the cross-examination, with the audio remaining constant.

Even with a single variable at our disposal, the hands-on practice of making these different versions called attention to the sheer malleability of courtroom actuality. For example, in the course of a back-and-forth exchange with the defence attorney, the claimant repeats an allegation that police officers manhandled him when they ‘threw’ him into a waiting police car. The transcript (2.04 to 2.12 in the video) runs as follows:

Claimant: They was both in there and they threw me in the car.

Attorney: [pause] Threw you in the car?

Claimant: Well, throw me inside the car.

Attorney: Picked you up off the ground and threw you in?

Claimant: Well, just grab you, how they throw you inside the car.

One advantage of courtroom filming over audio transcription is, of course, that gestures and intonation become part of the public record. And indeed, if we show Feed 1 for the duration of this exchange, we will see that the claimant underlines his speech with a couple of physical gestures, swinging both arms across his body in an action that might recall the tossing of garbage. If, however, during this exchange the image track consists of Feed 2, remaining fixed on the attorney, the claimant’s gestures will go unseen. Every act of selection is also an act of omission. It seems likely that seeing the gesture will yield a more vivid impression of the claim. Hearing the claim without its accompanying physical illustration, by contrast, may make it seem like the claimant is merely repeating himself, unable to substantiate his report. Instead we will have a view of the defence attorney, whose sceptical, unmoved expression on receiving this report may prompt our interpretation further in this direction. At any rate, the point here is that the choice of feed at this moment – hence, potentially at any moment – has the potential to dramatically shape how we interpret courtroom proceedings.

It does not follow from this, however, that the camera should forever remain on the speaking party in case he or she offers an accompanying gesture. For example, a few moments earlier, the clip records the following exchange:

Attorney: If I understood your testimony on direct [i.e. under direct examination], you say they say dragged you to the car?

Claimant: Well, they didn’t practically drag me, they just banged me everywhere, it’s rails going outside, they’re banging me everywhere and... being kinda, ur, rough, if you wanna call it, with me, all the way out there. I can’t – my back hurts too much, I can’t – it was hard to walk. And I keep asking them for an ambulance and they keep denying it to me. So they was just dragging

me – not dragging me like *dragging* me, but they was being rough, aggressive – towards the car.

[Pause]

I mean, dragging me, like *dragging* me, I'd be laying down on the ground, that's what I understand for 'dragging'. No.

Attorney: So it's not that.

Claimant: No, it was not that – I was still able to walk, they was just being rough.

The claimant's pause halfway through this passage of testimony is about four or five seconds in length, and may seem surprising, possibly odd or even suspicious, for a viewer who only has access to Feed 1. That viewer would be justified in wondering if this pause and resumption represents a further adjustment in the claimant's story. Those shown Feed 2, on the other hand, will be able to grasp that the attorney gives a gesture with both hands that suggests that he is trying to picture the situation. The gesture is therefore effectively an additional question, a request for further information, to which the claimant responds by trying to define 'dragging' in an attempt to clarify his characterisation of the event. What this example shows, in other words, is not just that matters of selection are likely to shape the inferences an audience will draw (although that is doubtless true), but, more importantly, that there are ways of reconstructing the material that can *make more sense* of courtroom proceedings. In particular, we found that restricting the extent and responsiveness of cutting between participants is likely to obscure the nature of interaction in the courtroom.

Having experimented with different ways of assembling the two feeds, we wanted to explore next how audiences would respond to some of these different versions. We constructed two versions to broadly correspond to each of the stylistic modes we outlined in the section above, the first conforming to the transcription mode, and the second the observational mode. Our two versions can be viewed here: Version A: [Olmo Artau v Farr A](#); Version B: [Olmo Artau v Farr B](#). Version A more regularly shows the attorney as he asks questions, responds to claims, consults papers, and so on — all, it's worth reiterating, captured by a fixed camera trained on the attorney, who remains behind the podium for the duration of the filming. Version B is closer to the transcription mode, offering more sustained shots of the claimant with the attorney's questions regularly heard from offscreen. We showed these versions to survey respondents and asked them for their views on the exchange. One of the two versions was also shown to focus groups alongside material from a range of other jurisdictions.

Audience interpretations of courtroom footage

A recurring theme in the focus groups, irrespective of the type of footage watched, was concern over selectivity. Participants frequently expressed frustration at not being able to see more, and in discussing their restricted vantage point in watching proceedings, commonly questioned why the footage directed their attention to particular courtroom participants and not others. The frustration was especially acute in the group composed of members of the University of the Third Age. Asked if they had watched any as-live court broadcasts, one woman spoke of her general sense of frustration with this coverage, and it was directed towards journalists and editors. 'Who are these people to handpick what we see or hear?', she exclaimed at one point. She was referring to the coverage of the Oscar Pistorius trial in the first instance, but was similarly critical of footage from the UK Supreme Court (which, she complained, didn't give 'a sense of the actual procedure'). For her, selection was an intrinsic problem that didn't go away with the 'transcription' stylistic mode of courtroom filming.

Each of the groups had an extended and mixed discussion concerning participants' preferences for particular types of footage. We left this as an open question, and it was one that generally sparked lively and productive debates about the function of court transmissions. There was widespread agreement that footage that was constructed to approximate courtroom drama risked sensationalising proceedings, although this was a presumed, third person effect. That is, none of the participants engaged with the footage in this way, but worried that others might. In turn, the footage that, in our analysis, conforms to the transcription stylistic mode was generally seen as 'amazingly dull', as one participant succinctly put it. Some felt that this was entirely in keeping with the tone and function of court processes; others — and they were greater in number — saw the seeming absence of an attempt to engage viewers as emblematic of a particular attitude, a point we return to below.

Participants' responses to the differently-edited versions of the US federal trial illuminated a set of more nuanced differences in audience response. Those who watched Version A, which shows more of the attorney, even at points when the claimant is speaking, tended to demonstrate a more detailed comprehension of the episode. In their answers to the question 'What do you think is going on in this clip?', for example, they were much more likely than participants who had watched Version B to point out specific features of the exchange, such as the involvement of two police officers, the place of arrest, and the lawyer's interrogation of the wording of the claimant's written statement. In total, ten of the 20 participants who watched Version A picked up on such details. Moreover, perhaps surprisingly, given that the audio was identical in each version, six of the participants shown Version A offered an account using words that were spoken during the clip — for instance, the word 'rough', as uttered by the claimant — with three of them making clear that they were directly quoting the footage. By contrast, none of the participants who watched Version B showed this level of recall, with only two referring to specific elements of the exchange they watched. Their responses tended to be less in-depth, with six of the 20 participants who watched this film version giving very basic descriptions of what they watched, such as 'lawyer questioning the victim'.

It wasn't just that those who watched Version B tended to notice less, but that their engagement seemed to be of a different nature than those who watched Version A. Those who watched Version B mainly described the lawyer in vague terms, as, generally 'doing his job', as one respondent put it. It is reasonable to suggest here that since the lawyer got less screen time in Version B this resulted in him being an altogether less vivid character for those who watched this footage. Indeed, one participant commented directly on this, pointing out that the 'camera was on him a lot less, so [I have] no strong feelings towards him'. By contrast, the claimant loomed large for those who watched Version B, and they tended to attach considerable importance to the question of his trustworthiness — almost as if they saw themselves as jury by proxy. Eight of the 20 participants focussed on this issue when responding to the question 'What do you think of the person giving evidence?', and three of these were especially detailed accounts. Take the following response, with italics used to show up the degree to which veracity and trustworthiness are key features of this participant's response to the claimant in Version B:

He seems relatively relaxed and confident. Struggles a bit to clarify what happened, but is clever and seems thorough and *honest* in the way he attempts to translate his recollection of what happened. Still, it feels *slightly suspicious* as to what might have *actually* happened. I think *he might know how to play the victim*. However, to a certain extent I sympathize with him. I think of him as being *more honest* than the lawyer.

By contrast, those who watched Version A were less likely to take on this adjudicative role, rarely engaging in any consideration of whether the claimant was lying. Only two of the 20 participants engaged in this type of speculation, and both of these were brief mentions of honesty and consistency respectively. Instead, they were more likely to defer this judgement, focussing on whether *the lawyer* believed the claimant to be lying or telling the truth. 'He is not very convinced by what the man is saying' commented one participant, and, in total, six of those who watched Version A — and none who watched Version B — offered views about how the lawyer was signalling his attitude to the claimant and how he was approaching his task. It seems likely this was the result of being able to see how the lawyer was consulting papers, listening to remarks and more *visibly* putting the claimant under pressure. In other words, they seemed to position themselves as watching an exchange unfold, rather than as adjudicators.

These conclusions are, of course, based on a small sample. They were, though, consistently supported elsewhere in the study, specifically in the way in which focus group participants responded to other courtroom footage. With great regularity, we found that long duration mid-shots of courtroom participants (sustained, in some cases, for several minutes or more) tended to prompt focus group members to reflect at some length on the veracity and/or authority of the person speaking. This was particularly evident in people's responses to footage of a criminal trial from a US State court where a static camera, fixed upon the witness box, had been used to record court proceedings in a single take. As one focus group participant commented, the space is only vaguely recognisable as a courtroom (as he pointed out, it could just as well be footage of a political speech). In turn, the focus is *entirely* on

the witness giving testimony, who in this instance happens to be a police officer. For one focus group participant, a male retiree, the witness 'ooz[ed] unreliability'. Participants in other focus groups felt similarly, with one young woman inadvertently talking about this witness as being 'on trial'.

Importantly, sustained coverage of other courtroom participants elicited similarly forensic analyses of character and reliability. In other words, this effect was not only in evidence when viewers were watching someone speaking from the witness box. In watching footage from the UK's Court of Appeal of judges' summing-up speeches, focus group participants frequently offered judgement on the judges themselves. Extracted from a wider context by virtue of the single-frame, fixed camera arrangement, the images of judges seemed to invite scrutiny, less about *what* they were saying and more about his or her manner and bearing. Some saw the judges in positive terms, as 'clear', 'concise', 'intellectual', and 'dispassionate'. More frequently, comments were negative. Participants took particular exception to judges' tone of voice, described variously as 'punchy', 'harsh', 'unemotional', 'brusque', 'intimidating', 'blunt', and having 'no empathy'. For many, there was a perceived incongruity 'between the way they're talking and what they're talking about', as one of the male participants put it. This was a point of discussion in all four of the focus groups, and for some the irritation went beyond a nagging concern with the judge's mode of delivery to a disdain for intellectual posturing. Female participants were especially vocal on this point. One, a speech therapist in her late 20s, was 'a bit distracted by the wig'. Another, a female retiree in her early 60s, described the UK court footage, and the judge's role in particular, as a 'kind of intellectual thing...a bit of a game' adding, later, that her main impression of the UK Supreme Court was the 'ponderous solemnity of the whole thing. [Adopts posh voice] 'We are very important people'...' Other female participants were specifically put off by the lack of diversity in the courtroom; one young woman's first reaction to what she had seen was: 'very, very white male'. In one sense, in noticing these things, focus group participants are simply picking up on the homogeneity of the UK judiciary. We would add, however, that the transcription mode encourages viewers to fasten onto the personal characteristics of the speaking subject.

Conclusion

Throughout this article we have argued that there are choices to be made when filming the courtroom, both on the local level of production and in terms of broader stylistic modes. The analysis presented above has sought to give a thorough account of why these observations matter. The practice research exercise and the connected audience study showed that even an adjustment in the bare sequencing of shots (i.e. 'what gets shown when') can help or hinder an audience's ability to make sense of what happens in the courtroom, and invite them to engage in a particular way with the material. Our study found that lengthy shots of a speaking subject tend to encourage viewers to query the truth-claims and authority of that person, whether defendant, witness, or judge. By contrast, when cuts between courtroom participants are more frequent and the wider court is shown, viewers tend to understand themselves as observing a justice *process* and are more likely to engage with how that process is unfolding. Questions about veracity – for instance,

the veracity of the claimant alleging police manhandling – do not disappear, but viewers are less likely to take it upon themselves to adjudicate, perhaps because they see more vividly that those claims are being put under pressure and scrutinised by courtroom participants.

Likewise, our study indicated that the way a judge is visually extracted from the wider court, by means of a sustained and uninterrupted medium shot for the duration of a summing-up speech, is likely to encourage a perception of that judge as unaccountable and out-of-touch. Moreover, such a perception was likely to be seen as emblematic of problems of the criminal justice system more broadly. In this, and other ways besides, the dominant approach to courtroom filming achieves precisely the opposite of what governments anticipated. Above, we pointed out that the most common rationale for courtroom broadcasting is to improve public understanding of and trust in criminal justice processes and outcomes. Our analysis suggests that the transcription mode of courtroom filming (characterised by extended-duration, talking-head shots of judges, barristers, or witnesses, cut off from the wider context of the courtroom and speaking merely in the direction of unseen others) is more likely to prompt feelings of distrust in justice systems than the observational mode.

The transcription mode is likewise an own-goal for public understanding of the justice system. In our study, viewers who watched footage that showed the attorney's responses to the claimant and stressed the interaction between the two parties were significantly more likely to recall details of what was said, despite the audio being the same in both versions. This suggests that a common-sense prescription for how a court's video journalist should proceed – namely, 'show whomsoever is speaking at any given point' – will not necessarily yield the most informative and engaging view of the courtroom. We have pointed, for instance, to the utility of shots that help locate the participants within a wider concrete space, and of editing that allows an audience to follow the *sense* of an unfolding exchange.

More generally, this article has sought to interrogate the relationship between seeing, believing, and trusting. By way of conclusion, we want to suggest this as a fruitful line of inquiry for other researchers interested in crime and the media. Far from being relevant only to the specific innovation of courtroom broadcasting, the analysis presented above — interested as it is in how footage might prompt viewers to adopt an adjudicatory role, and the effects of this — is pertinent to our understanding of, amongst other things, the consequences of moving towards mediated court appearances and viewers' engagement with criminal justice investigation documentaries (such as *Making a Murderer*, 2015, dir. Ricciardi and Demos).

We have sought to show, too, that the study of courtroom broadcasting contributes to our understanding of institutional transparency. Our analysis suggests that the idea that transparency initiatives open a neutral window onto criminal justice processes and practices is fundamentally unsound. Instead, we have argued, the transcription mode of courtroom filming should be seen as a stylistic option that amounts to a claim about the criminal justice system and *how* justice should be 'seen to be done'. The transcription mode declares the courtroom to be nothing more than a bureaucratic site from which information is given, statements are

made, judgements are announced. The continuous depositing of this material into the archive thereby amounts to a specific form of the data-dumping that characterises transparency more generally. At one level, the archive of footage represents a digital swamp that no lay viewer is likely to trawl through; even at the level of an individual case, the mere fact of ‘accessibility’ is, as the analysis above demonstrates, prioritised over intelligibility.

Again, Bentham’s vision of the ‘open court’ provides a useful point of comparison. Bentham believed that open courts served as schools and theatres for democratic societies (Bentham in Burton, 1843: 115-6). He saw them as places of dynamic co-presence and engaged spectatorship. Our suggestion is that ‘transparent’ courts — transparency initiatives more generally — work towards an altogether different form of public participation. The ‘transparent court’ is more informational than educative, and more technocratic than performative. The stylistic mode associated with transparency might, perhaps, be best thought of as an anti-style, but it is by no means neutral in its effects on viewers. We would add, by way of a final thought, that just as Bentham’s ‘open court’ reflects a particular vision of the public’s role in democratic processes, new attempts to mediate criminal justice suggest an altogether different vision of the public’s role in seeing justice being done — that is, as passive, anonymous, and distant viewers of bureaucratic outcomes.

References

- Barrett E and Bolt B (2010) *Practice as Research: Approaches to Creative Arts Enquiry*. London: I.B. Tauris.
- Bentham J (1843) ‘Publicity in Courts of Justice’ in (Ed) J H Burton (1843) *Benthamiana: Or, Selected Extracts from the Works of Jeremy Bentham*. Edinburgh: William Tait.
- Biber K (2018) Dignity in the digital age: Broadcasting the Oscar Pistorius trial. *Crime, Media, Culture* onlinefirst version: 1-22.
- Chainey S and Tompson L (2012) Engagement, Empowerment, and Transparency: Publishing Crime Statistics Using Online Crime Mapping, *Policing: A Journal of Policy and Practice*, 6(3): 228-39.
- Cornes R (2013) A constitutional disaster in the making? The communications challenge facing the United Kingdom’s Supreme Court. *Public Law*, 266-291.
- Courts of New Zealand (2016) In-Court Media Coverage Guidelines. Available at: <https://www.courtsofnz.govt.nz/going-to-court/media/rules-and-resources/IN-COURTMEDIACOVERAGEGUIDELINES2016T.pdf>
- Dorrian L (2015) Report of the Review of Policy on Recording and Broadcasting of Proceedings in Court, and the Use of Live Text Based Communications from Court.

Available at: <http://www.scotland-judiciary.org.uk/Upload/Documents/ReportoftheReviewofPolicyonRecordingandBroadcastingofProceedingsinCourtJanuary2015.pdf>

Garcia-Blanco I and Bennett L (2018) 'Between a 'media circus' and 'seeing justice being done': Metajournalistic discourse and the transparency of justice in the debate on filming trials in British newspapers', *Journalism*, online first.

Glasgow University Media Group (2009) *Bad News*. London: Routledge.

The Guardian (2018) Coverage of UK court proceedings inevitable, says top TV executive. 21st August 2018. Available at: <https://www.theguardian.com/media/2018/aug/21/more-filming-in-british-courts-is-inevitable-says-news-producer>

Jameel L and Bunn S (2015) *Body Worn Video in UK Policing*. Post-brief. Houses of Parliament: Parliamentary Office of Science and Technology.

Johnston J (2018) Three phases of courts' publicity: Reconfiguring Bentham's open justice in the twenty-first century. *International Journal of Law in Context*, 14: 525-38.

Judicial Office for Scotland (2013) Cameras and live text-based communication in the Scottish courts: A Consultation. Available at: <http://www.scotland-judiciary.org.uk/Upload/Documents/ConsultationDocument.pdf>

Kellner D (2003) *Media Spectacle*. London: Routledge.

Lorentz P and Schulberg S (1948) *Nuremberg: Its Lesson for Today*, USA: US Military Documentary Film Unit, Information Services Division.

Margetts H (2014) Data, Data Everywhere: Open Data versus Big Data in the Quest for Transparency. In: Bowles N, Hamilton JT, Levy DAL (eds) *Transparency in Politics and the Media: Accountability and Open Government*. London: I.B. Tauris, 167-78.

McKay C. (2018a) 'Video Links from Prison: Court "Appearance" within Carceral Space', *Law, Culture and the Humanities*, 14(2): 242-62.

McKay C (2018b) *The Pixelated Prisoner: Prison Video Links, Court 'Appearance', and the Justice Matrix*. London: Routledge.

Michalczyk JJ (2014) *Filming the End of the Holocaust: Allied Documentaries, Nuremberg, and the Liberation of the Concentration Camps*. London: Bloomsbury.

Ministry of Justice (2012) Proposals to allow the broadcasting, filming, and recording of selected court proceedings. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217307/broadcasting-filming-recording-courts.pdf

Ministry of Justice (2016) Crown Courts to Pilot Filming for the First Time. Press release, available at: <https://www.gov.uk/government/news/crown-courts-to-pilot-filming-for-the-first-time>

Ministry of Justice, Lord Chief Justice of England and Wales, Senior President of Tribunals, (2016) Transforming our Justice System, London: HMSO, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/553261/joint-vision-statement.pdf

Moore, S. (2018) 'Towards a sociology of institutional transparency: openness, deception, and the problem of public trust', *Sociology*, 52(2): 416-30.

Moran LJ (2016) Visible Justice: YouTube and the UK Supreme Court. *The Annual Review of Interdisciplinary Justice Research*, 5: 223-63.

Mulcahy L (2008) 'The unbearable lightness of being? Shifts towards the virtual trial', *Journal of Law and Society*, 35(4): 464-89.

Mulcahy L (2011) *Legal Architecture: Design, Due Process and the Place of Law*. London: Routledge.

Olmo Artau v Farr A, available online at <https://www.youtube.com/watch?v=iTHzI17YDAs&feature=youtu.be>

Olmo Artau v Farr B, available online at <https://www.youtube.com/watch?v=Zat-iMyjeVeo>

O'Sullivan A (2018) *Universal Jurisdiction in International Criminal Law: The Debate and Battle for Hegemony*. London: Routledge.

Parker JEK (2015) *Acoustic Jurisprudence: Listening to the trial of Simon Bikindi*. Oxford: Oxford University Press.

Ricciardi L and Demos M (2015) *Making a Murderer*, USA: Netflix.

Rowden E (2018) 'Distributed courts and legitimacy: What do we lose when we lose the courthouse?' *Law, Culture and the Humanities* 14(2): 263-281.

Smith O (2018) *Rape Trials in England and Wales: Observing Justice and Rethinking Rape Myths*. Basingstoke: Palgrave Macmillan.

Sousa W, Miethe T D, Sakiyama M (2015) *Body Worn Cameras on Police: Results from a National Survey of Public Attitudes*. University of Nevada Las Vegas: Center for Crime and Justice Policy.

Sousa W, Miethe T D, and Sakiyama M (2018) Inconsistencies in Public Opinion of Body-Worn Cameras on Police: Transparency, Trust, and Improved Police-Citizen Relations, *Policing: A Journal of Policy and Practice*, 12(1): 100-8.

Stepniak D (2004) A Comparative Analysis of First Amendment Rights and the Televising of Court Proceedings. *Idaho Law Review* 40(2): 315-349.

Stepniak D (2012) *Audio-Visual Coverage of Courts: A Comparative Analysis*. 2nd Edition, Cambridge: Cambridge University Press.

Thompson JB (2005) The New Visibility. *Theory, Culture, and Society* 22(6): 31-51.

UKSC (2013) 'Court on camera: judgement summaries on demand', News release, 21st January 2013. Available at <https://www.supremecourt.uk/news/court-on-camera.html>

UKSC (2017) The Supreme Court Annual Report and Accounts 2016-2017. Available at <https://www.supremecourt.uk/docs/annual-report-2016-17.pdf>

Werner W (2016) 'Justice on Screen — A Study of Four Documentary Films on the International Criminal Court', *Journal of International Law*, 29(4): 1043-60.

Youm K H (2012) 'Cameras in the Courtroom in the Twenty-First Century: The U.S. Supreme Court Learning from Abroad?' *BYU Law Review*, 6(9): 1989-2032.